

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.**

FILED BY CLERK

JAN 28 2009

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE TRENELLE G.

) 2 CA-JV 2007-0097
) DEPARTMENT B
)

) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
) Appellate Procedure
)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 16929601

Honorable Theodore J. Knuck, Judge Pro Tempore

AFFIRMED

Barbara LaWall, Pima County Attorney
By James M. Coughlin

Tucson
Attorneys for State

Robert J. Hirsh, Pima County Public Defender
By Julie M. Levitt-Guren

Tucson
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B R A M M E R, Judge.

¶1 In this appeal, Trenelle G. challenges the juvenile court's order, entered after Trenelle was adjudicated delinquent, requiring him to pay restitution in the amount of \$3,030 for, inter alia, damage to the victim's car. We affirm.

¶2 Trenelle was charged by amended delinquency petition with theft of a means of transportation, third-degree burglary, and possession of burglary tools. All three charges

arose out of Trenelle's theft of the victim's 1996 Dodge Neon. Pursuant to a written plea agreement, Trenelle agreed to "plead guilty" to an amended charge of attempted theft of a means of transportation in exchange for the dismissal of the remaining two charges. The agreement included a "Restitution cap" of \$3,500. The juvenile court placed Trenelle on probation for one year, ordered him to pay restitution in an amount that was yet to be determined, and granted the state an additional thirty days to provide documentation in support of the request for restitution.

¶3 Pursuant to the state's request, the court held a restitution hearing. The victim submitted an affidavit outlining her losses and testified at the restitution hearing that, although her car had been in perfect condition before it was stolen, it was "totaled" when she recovered it. She stated it "[l]ooked like it had been wrapped around a telephone pole on the driver's side." The car was taken to a recreational vehicle ("RV") dealership where the victim's son-in-law was employed as a service manager.

¶4 The victim testified her son-in-law, who "got rid of" the car for her, had told her the value of the car was less than it would cost to repair it. Based on the Kelley Blue Book, she requested \$2,004 for the value of the car. The victim's son-in-law apparently had disposed of the car for her but did not recover any amount for the salvage value of the car. The victim also asked that Trenelle be required to pay her \$325, the estimated replacement value, for tools she had kept in the car, some inside the car and some in the trunk. She claimed the tools were not recovered but admitted she had been unable to open the trunk to see if they were still inside and had not asked anyone at the RV dealership to try to open it to see if the tools were there. Trenelle's counsel objected to awarding the victim the full

amount of restitution sought, arguing a portion should be deducted for the salvage value of the car and a portion for the tools because the victim had not sought to have the trunk opened. Additionally, counsel argued it was unfair to impose the entire restitution burden on Trenelle because he had a codefendant who could have been required to pay a portion of this obligation but for the state's failure to have obtained a timely affidavit of loss for the codefendant's disposition hearing.

¶5 The juvenile court ordered Trenelle to pay \$3,030 in restitution.¹ On appeal, Trenelle contends the court erred by failing to deduct amounts the victim could have recovered: the salvage value of the car and potentially recoverable tools. Relying on *State v. Reynolds*, 171 Ariz. 678, 832 P.2d 695 (App. 1992), Trenelle contends the victim was required to dispose of the car in a commercially reasonable manner, which includes avoiding the inflation of losses. And Trenelle relies on *State v. Ferguson*, 165 Ariz. 275, 798 P.2d 413 (App. 1990), for the proposition that the total amount awarded should have been decreased by the value of the tools the victim possibly could have recovered. Trenelle is arguing, essentially, that the victim had a duty to mitigate the damages that were a consequence of his criminal conduct. We disagree.

¹The total restitution award is based on the following amounts, which were set forth in the victim's affidavit: \$2,004 for the value of the vehicle; \$940 for various items of personal property, including \$325 for tools that were never recovered; \$76 for towing and storage; and an additional \$10 for a "St. Christopher Statue" that had been in the car. On appeal, Trenelle only challenges the value of the car and the tools. As reflected in the transcript from the restitution hearing, repeatedly the victim stated that the value of the car was \$2,400, and this is the value Trenelle ascribes to the car in his opening brief. But that figure, when added to the items of personal property, towing, and storage fees, does not produce the total of \$3,030. The court awarded restitution for all but the \$480 in "grief & suffering" that the victim had requested in her affidavit.

¶6 When “a juvenile is adjudicated delinquent, the court, after considering the nature of the offense . . . shall order the juvenile to make full or partial restitution to the victim of the offense for which the juvenile was adjudicated” A.R.S. § 8-344(A). Absent an abuse by the juvenile court of its discretion in determining the appropriate amount of restitution, we will not disturb the court’s order. *In re Andrew C.*, 215 Ariz. 366, ¶ 6, 160 P.3d 687, 688 (App. 2007). “[W]e will uphold the amount of restitution if it bears a reasonable relationship to the victim’s loss.” *In re William L.*, 211 Ariz. 236, ¶ 10, 119 P.3d 1039, 1042 (App. 2005).

¶7 In delinquency cases, courts look to the law of restitution in the analogous context of adult criminal prosecutions. *See Andrew C.*, 215 Ariz. 366, ¶¶ 8-12, 160 P.3d at 689; *see also William L.*, 211 Ariz. 236, ¶¶ 11-12, 119 P.3d at 1042; *In re Ryan A.*, 202 Ariz. 19, ¶ 20, 39 P.3d 543, 548 (App. 2002); *In re Pima County Juv. Action No. 45363-3*, 151 Ariz. 541, 541, 729 P.2d 345, 345 (App. 1986). And in that context, “a trial court is required to determine the full amount of the victim’s loss to make the victim whole.” *Reynolds*, 171 Ariz. at 681, 832 P.2d at 698. “Arizona’s statutory scheme requiring restitution in criminal cases is based on the principle that the offender should make reparations to the victim by restoring the victim to his economic status quo that existed before the crime occurred.” *William L.*, 211 Ariz. 236, ¶ 11, 119 P.3d at 1042. In determining what is necessary to make the victim whole, “the court has broad discretion in setting the restitution amount based on the facts of the case.” *Id.* ¶ 12.

¶8 Here, the victim’s statements and the affidavit she provided sufficiently established that her car, which had been in “[p]erfect” condition before Trenelle stole it, was

“totaled” when she recovered it. Trenelle does not dispute that it would have cost more to repair the vehicle than it was worth. Rather, he insists the victim had a duty to minimize the economic damage that resulted from his criminal conduct, including a duty to insist that her son-in-law, who had disposed of the car for her, recover its salvage value. We find no support for that argument. And we agree with the state that *Reynolds* not only fails to support Trenelle’s argument, it directly supports the state’s position and the juvenile court’s order.

¶9 In *Reynolds*, the insurer of the victim’s vehicle, having paid the victim for loss of the car, was the victim who sustained the majority of the loss resulting from the defendant’s criminal conduct. 171 Ariz. at 679, 832 P.2d at 696. Not only did the court reject the defendant’s contention that the insurance company had been required to dispose of the vehicle in a commercially reasonable manner consistent with the Uniform Commercial Code, but it also rejected the importation of measures of damages that apply in the civil context to the determination of restitution awards in criminal cases. *Id.* at 682, 832 P.2d at 699. The court stated, “[C]oncepts such as ‘failure to mitigate’ or ‘not commercially reasonable’ simply do not fit into the framework of the criminal law.” *Id.*

¶10 As a result of Trenelle’s theft of her car, the victim sustained a total loss of its value. She did not recover any portion of the car’s salvage value, nor was she required to do so in order to minimize the economic loss that resulted from Trenelle’s criminal conduct. The car was, as the victim stated, “totaled.” The victim entrusted its disposal to her son-in-law. Therefore, the juvenile court did not abuse its discretion by ordering Trenelle to pay restitution of \$2,004 for the car, without a deduction for its salvage value. Moreover,

Trenelle provided no evidence of what that salvage value might have been. On this record, we cannot say the court abused its discretion or erred as a matter of law, as Trenelle suggests.

¶11 We acknowledge that at least some of the tools might have been in the car and perhaps could have been recovered. But *Ferguson*, on which Trenelle also relies, does not stand for the proposition that the victim was required to exhaust all efforts to recover the tools, including, in this case, breaking into the trunk, which apparently would not open because of the damage to the vehicle. Nor has Trenelle persuaded us that, because the victim did not try to recover the tools, the juvenile court was required to deduct some unknown amount from her restitution claim. In *Ferguson*, the court simply concluded evidence that property had been returned to the victim was relevant in determining the total amount of restitution the defendant appropriately could be ordered to pay. 165 Ariz. at 277-78, 798 P.2d at 415-16. No tools were ever returned to the victim here; therefore, the court did not abuse its discretion in requiring Trenelle to compensate her for this portion of her loss.

¶12 The juvenile court's orders adjudicating Trenelle delinquent, placing him on probation, and requiring him to pay the victim \$3,030 in restitution are affirmed.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge